

JOHN R. KROGER
Attorney General



MARY H. WILLIAMS
Deputy Attorney General

DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

May 22, 2012

Brett J. Austin, Registered Agent
Austins Custom Fencing & Decking, Inc.
28060 SE Sylvian Way
Boring, OR 97009

Austins Custom Fencing & Decking, Inc.
PO Box 33615
Portland, OR 97292

Re: Violation of Oregon Utility Notification Center Rules
DOJ File No.: 860-500-GB0310-12 / NC 322

**PLEASE READ ALL DOCUMENTS CAREFULLY –
DIRECT ALL CORRESPONDENCE TO THE PUBLIC UTILITY COMMISSION OF OREGON**

On February 28, 2012, a representative from your company met with the Oregon Utility Notification Center (OUNC) Enforcement Committee to discuss an alleged rule violation. At that meeting, an agreement was reached regarding penalties for the violation.

Enclosed are two sets of documents that contain a Complaint and a Stipulation. The Complaint serves as a formal notice to you of the violation you were charged with and requires that you Answer the allegation. Because you already reached an agreement with the OUNC Committee, you do not need to submit an Answer. Instead, you need only sign and return the enclosed Stipulation in order to answer the Complaint. If you had not reached an agreement with the OUNC Committee, filing an Answer would be your opportunity to admit or deny the allegation and, if denied, to ask for a formal hearing.

The Stipulation sets forth the terms and conditions of the agreement you reached with the OUNC Committee. To finalize the settlement, **you must sign the original Stipulation and mail it within 20 days of the date of this letter to:**

**Public Utility Commission of Oregon
Administrative Hearings Division
550 Capitol St NE – Suite 215
PO Box 2148
Salem OR 97308-2148**

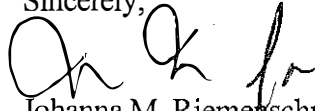
Austins Custom Fencing & Decking, Inc.
May 17, 2012
Page 2

You do not need to make payment until the Commission has approved the stipulation. The Commission should issue an order adopting the Stipulation within 30 days of its receipt. Please retain the extra copy of the Stipulation for your files.

If for some reason you no longer agree to the terms of the Stipulation, you **MUST FILE AN ANSWER TO THE COMPLAINT**, admitting or denying the allegation.

If there is a discrepancy between the formal Stipulation and the agreement reached at the meeting that causes you concern, please contact Michael Thompson at (503) 378-6760.

Sincerely,



Johanna M. Riemenschneider
Assistant Attorney General
Business Activities Section

JMR:naI/#3393479
Enclosures

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**

3 NC 322

4 PUBLIC UTILITY COMMISSION OF
5 OREGON,

6 Complainant,

7 v.

8 AUSTINS CUSTOM FENCING &
9 DECKING, INC. (an Oregon corporation),

9 Defendant.

COMPLAINT

10 1.

11 This proceeding is initiated by the Public Utility Commission of Oregon (hereinafter
12 “Commission”) to determine whether civil monetary penalties should be assessed as provided in
13 ORS 757.993. The Commission maintains its offices at:

14 550 Capitol St NE – Suite 215, PO Box 2148, Salem, OR 97308-2148.

15 2.

16 At all times herein relevant, Defendant was doing business in this state.

17 3.

18 Under ORS 757.993, the Commission has discretion to seek penalties for violations of
19 rules adopted by the Oregon Utility Notification Center (OUNC).

20 4.

21 Under ORS 757.552, OUNC has adopted rules that prescribe requirements for
22 notification to OUNC of excavation activity and marking of underground facilities for the
23 purpose of preventing damage to such facilities. “Excavation” and other relevant definitions are
24 contained in OAR 952-001-0010.

25 ///

26 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

5.

OUNC adopted OAR 952-001-0090 which was in effect at all times herein relevant. The rule provides in relevant part:

(1) An excavator shall not commence an excavation which requires notice under these rules until the excavator has received a response from each operator of underground facilities in the area of the proposed excavation, or until at least two (2) business days (48 hours) have elapsed from the time the excavator notified the Oregon Utility Notification Center.

6.

On or about October 21, 2011, Defendant violated OAR 952-001-0090 by commencing an excavation near 13569 – 13675 MacBeth Drive and 13656 SW Capulet Lane in Tigard, Oregon without waiting the required 48 hours to receive a response from the operators of the underground facilities.

7.

ORS 757.993 provides, in relevant part, that:

“* * * every person who violates or who procures, aids or abets in the violation of any rule of the Oregon Utility Notification Center shall incur a penalty of not more than \$1,000 for the first violation and not more than \$5,000 for each subsequent violation.”

8.

Defendant has violated OUNC rules in the past resulting in Order No. 08-151 issued on March 4, 2008, Order No. 07-016 issued on January 12, 2007 and Order No. 06-503 issued on August 24, 2006.

9.

WHEREFORE, the Commission directs Defendant to file a verified answer to this Complaint within twenty (20) days from the date this Complaint is mailed to Defendant. If no verified answer or other written appearance raising a question of fact or law is filed with the Commission at its office in Salem, Oregon, within the 20-day period, the

///

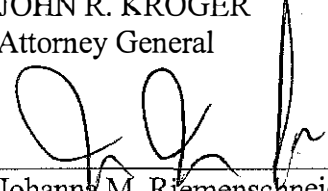
1 allegations of the Complaint are deemed admitted, and a penalty will be imposed in the
2 amount of \$1,000 for each violation alleged, for a total of \$1,000.

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

DATED this 10 day of May 2012.

Respectfully submitted,

JOHN R. KROGER
Attorney General



Johanna M. Riemenschneider, #99008
Sr. Assistant Attorney General
Of Attorneys for the Public Utility Commission
of Oregon

1 4.

2 The parties further agree that the Commission may enter an order assessing civil
3 monetary penalties against Defendant in the amount of \$1,000 under the following terms and
4 conditions:

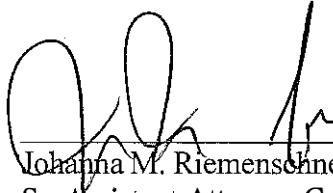
- 5 A. Defendant must sign and return this Stipulation within 20 days of the date it was
6 served upon (mailed to) defendant.
- 7 B. \$200 becomes due and payable on or before the 30th day following the Commission's
8 entry of its order in this case.
- 9 C. Payment must be by money order made out to the Public Utility Commission of
10 Oregon, and the memo line of the money order must state the "NC" docket number
11 in the caption of this Stipulation.
- 12 D. Payment of the balance of the penalties (\$800) will be permanently suspended and no
13 further penalties will be imposed for the violation alleged in the Complaint unless
14 Defendant fails to comply with all of the terms of this stipulation and all of the rules
15 adopted by the Oregon Utility Notification Center (OUNC) under ORS 757.552 for a
16 one-year period following the date of the Commission's entry of an order.
- 17 E. Defendant must contact the OUNC Speakers Bureau online at
18 www.digsafelyoregon.com or by calling (503) 232-1987 to arrange for and attend a
19 training session on Oregon excavation laws within 45 days following the entry of the
20 Commission's order.
- 21 F. In the event that Complainant contends that Defendant has not complied with all of
22 the terms of this Stipulation and all OUNC rules for that one-year period,
23 Complainant may reopen this proceeding and petition for imposition of all or a
24 portion of the suspended penalties. In such case, Defendant is entitled to a hearing
25 and to be notified of the basis upon which Complainant contends that compliance has
26 not occurred.

1 G. Complainant's failure to enforce any provision of this stipulation, or decision to
2 waive any violation or nonperformance of this stipulation in one instance, will not
3 constitute a waiver by the Complainant of that provision, any other provision, or any
4 other violation or nonperformance in another instance.

5 5.

6 This Stipulation is conditioned upon final approval of its terms by the Commission. If
7 the Stipulation is not accepted in its entirety, it is deemed withdrawn.

8 DATED this 11th day of May 2012.



11 Johanna M. Riemenschneider, #99008
12 Sr. Assistant Attorney General
13 Of Attorneys for the Public Utility Commission
14 of Oregon

15 DATED this _____ day of May 2012.

17 _____
Defendant / Representative (signature)

19 _____
(Print Name)